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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/080,652	02/22/2002	Gregory B. Altshuler	P00547/70076 PLC	8139

23628 7590 11/02/2005

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EXAMINER

SHAY, DAVID M

ART UNIT	PAPER NUMBER
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3735

DATE MAILED: 11/02/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/080,652	ALTSHULER ET AL.	
	Examiner	Art Unit	
	david shay	3735	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on August 31, 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3,4,6-12,14-17,19-30,32,34-40,42-72,74,76-85 and 88-101 is/are pending in the application.
- 4a) Of the above claim(s) See Continuation Sheet is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3,4,9-10,19-21,25,27-30,32,47,48,51,52,66,67,69-72,74,94 and 96-101 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Continuation of Disposition of Claims: Claims withdrawn from consideration are 6,7,⁸₁₁,12,14-17,23,24,26,34-40,42-46,49,50,53-65,68,76-85,88-93 and 95.

Claims 59-61 have been amended to read on the non-elected species of figure 28 and are withdrawn. Similarly, claims 84, 92, 93, and 95 are directed to the non-elected species of Figures 1 and 2.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1, 3, 4, 9, 19-21, 25, 27, 29, 32, 47, 48, 51, 66, 67, 74, and 97-99 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Hollnagel.

Claim 69, 74 and 94 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Eckhouse ('478).

Claims 28-30, 70-72, 100, and 101 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hollnagel in combination with Currey. Hollnagel teaches a device such as claimed except the concave surface. Currey teaches a device such as claimed except concentrating the beam. It would have been obvious to the artisan of ordinary skill to employ the concentrating waveguide in the device of Currey, since this provides better tissue penetration, as taught by Hollnagel or to employ the concave vacuum contact surface of Currey with device of Hollnagel, since this provides a most favorable condition for the tissues to be subjected to the action of the radiation, as taught by Currey, thus producing a device such as claimed.

Claims 10 and 52 are rejected under 35 U.S.C. 103(a) as being unpatentable over Anderson et al ('041) in combination with Hollnagel. Anderson et al ('041) teach employing a diffuse reflector in a light treatment device. Hollnagel teaches the desirability of coating a waveguide with reflective material. It would have been obvious to the artisan of ordinary skill to employ the coating of Hollnagel in the device of Anderson et al, since this more efficiently

transports the light, as taught by Hollnagel, or to employ the diffuse reflector of Anderson et al ('041) in the device of Hollnagel, since this provides a more uniform output which is desirable as taught by Anderson et al ('041), thus producing a device such as claimed.

Claims 1 and 96 are rejected under 35 U.S.C. 103(a) as being unpatentable over Eckhouse ('478) in combination with Hollnagel. Eckhouse ('478) teaches a device such as claimed except the reduced gap. Hollnagel teaches a device as claimed except the dimension of greater than 10 mm. It would have been obvious to the artisan of ordinary skill to include the reflective coating arrangement of Hollnagel in the device of Eckhouse ('478), since this would increase the efficiency thereof, or to employ the waveguide dimensions of Eckhouse ('478) in the device of Hollnagel, since this is a desirable design for cutaneous surgery, as taught by Eckhouse ('478) thus producing a device such as claimed.

Applicant's arguments with respect to claims 1, 3, 4, 8-10, 19-21, 25, 27-30, 32, 47, 48, 51, 52, 66, 67, 69-72, 74, 94, and 96-101 have been considered but are moot in view of the new ground(s) of rejection.

This is a Request for Continuing Examination of applicant's earlier Application No. 10/080,652. All claims are drawn to the same invention claimed in the earlier application and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action in this case. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO**

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MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no, however, event will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to david shay whose telephone number is (571) 272-4773. The examiner can normally be reached on Tuesday through Thursday from 6:30 a.m. to 5:00 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eleni Mantis-Mercader, can be reached on Monday, Tuesday, Thursday, and Friday at (571) 272-4740. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



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PRIMARY EXAMINER
GROUP 330